Filed 4/13/10 In re Bradley S. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re BRADLEY S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. BRADLEY S., Defendant and Appellant.	A125375 (Solano County Super. Ct. No. J38556)

After a contested jurisdictional hearing, the juvenile court sustained a charge of felony vandalism (Welf. & Inst. Code, § 602; Pen. Code, § 594, subd. (a)) against appellant Bradley S. Appellant was continued as a ward of the court and committed to the custody of the probation department for placement outside the minor's home. He contends that trial court failed to acknowledge its discretion to treat the offense as a misdemeanor, and that the matter must be remanded to the juvenile court for exercise of that discretion. We disagree and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant does not challenge the sufficiency of the evidence to sustain the jurisdictional finding of the juvenile court. On the night of February 19, 2009, appellant threw a rock at a car, breaking the driver's side window and damaging the door. The damage totaled more than $400. Appellant was a minor at the time of the

offense, and he had previously been adjudicated a ward of the court. On April 13, 2009, a petition was filed charging appellant with felony vandalism. (Welf. & Inst. Code, § 602; Pen. Code, § 594, subd. (a).)

A contested jurisdictional hearing was held May 27–29, 2009. Appellant denied involvement and presented alibi evidence. The court rejected appellant's testimony and found beyond a reasonable doubt that he had committed a felony violation of Penal Code section 594.

At the subsequent dispositional hearing on June 18, 2009, the court continued appellant as a ward of the court, placing him on probation with a condition of out-of-home placement. The court determined the maximum term of confinement to be three years and four months.

A timely notice of appeal was filed on July 2, 2009.

II. DISCUSSION

Appellant's sole contention on appeal is that the juvenile court erred by "operating on the mistaken belief that it was required to deem the offense a felony if damages were over $400.00" and failing to properly exercise its discretion. Appellant focuses on the court's statement at the time of its jurisdictional finding that "[t]he evidence supports that the damage exceeds $400 and, therefore, the court finds that to be a felony, which brings the minor within the provisions of Welfare and Institutions Code Section 602." He contends that the court's use of the word "therefore" indicates that the court found the offense to be a felony "solely" upon the amount of the loss, without understanding of its discretion to treat the matter as a misdemeanor. This, he argues, was inconsistent with the court's duty under Welfare and Institutions Code section 702 to be aware of, and to actually exercise, its discretion to declare a "wobbler" offense to be a felony or a misdemeanor.[1] (See *In Re Manzy W.* (1997) 14 Cal.4th 1199, 1207 (*Manzy W.*).)

[1] Welfare and Institutions Code section 702 provides in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be

The record fails to support the conclusion that appellant would have us draw. First, the court made an express *finding*, as required by Welfare and Institutions Code section 702, that the offense was a felony. Second, as the Attorney General correctly notes, at the dispositional hearing the court considered the report and recommendation of the probation officer, including a recommendation that the matter be deemed a felony, and reiterated that "The petition is *deemed* a felony as to Count 1." (Italics added.) The court set the maximum term of confinement for the offense accordingly. (See Welf. & Inst. Code, § 726, subd. (c) [minor removed from custody of parent or guardian may not be held longer than what would be the maximum term of imprisonment for an adult convicted of the same offense].)

Appellant's reliance on *Manzy W.* is misplaced. In that case our Supreme Court held that a juvenile court is required to declare whether the offense is to be deemed a felony or a misdemeanor. The juvenile court in *Manzy W.* failed to do so, and nothing in the record indicated that the court was aware of its sentencing discretion. (*Manzy W., supra,* 14 Cal.4th at p. 1210.) The matter was remanded to the trial court to make the requisite finding. (*Id*. at p. 1211.)

Here the juvenile court made the necessary finding on two separate occasions, and in indicating that it "deemed' the offense to be a felony, the court indicated its understanding of its discretion to do otherwise. We, in any event, presume the court properly performed its duty. (Evid. Code, § 664.) "The general rule is that a trial court is presumed to have been aware of and followed the applicable law." (*People v. Mosley* (1997) 53 Cal.App.4th 489, 496.) These general rules concerning the presumption of regularity of judicial exercises of discretion apply to sentencing issues. (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1517.)

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punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony."

III. DISPOSITION

The jurisdictional and dispositional orders of the juvenile court are affirmed.

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Bruiniers, J.

We concur:

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Jones, P. J.

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Needham, J.